In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 588

THE FIRST HARDIN NATIONAL BANK AND THE FARMERS BANK OF VINE GROVE, KENTUCKY, PETITIONERS

v.

FORT KNOX NATIONAL BANK AND JAMES J. SAXON, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE COMPTROLLER OF THE CURRENCY IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 29–34) is reported at 361 F. 2d 276. The opinion of the district court (Pet. App. 25–28) is not officially reported.

JURISDICTION

The judgment of the court of appeals was entered on May 26, 1966. On August 5, 1966, Mr. Justice Brennan extended the time for filing a petition for a writ of certiorari to and including September 23, 1966.

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The petition was filed on September 22, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

The pertinent statutory provisions are set forth in the Appendix, *infra*, pp. 9–12.

QUESTION PRESENTED

Whether the Comptroller and the courts below correctly ruled that that portion of Fort Knox which was a part of Hardin County, Kentucky, at the time of its cession to the United States, continues to be a part of the county for purposes of Kentucky branch banking law, made applicable to national banks by 12 U.S.C. 36(c)(2).

STATEMENT

Fort Knox National Bank has its principal office in that part of the Fort Knox Military Reservation which was within the geographical boundaries of Hardin County at the time of acquisition by the United States (Pet. App. 30–31). After Fort Knox National Bank announced that it would open a branch outside the Military Reservation, in the city of Radcliff in Hardin County, the petitioners brought this action, alleging that the establishment of such a branch would be unlawful and that each would lose customers if the new branch were opened (Pet. App. 41, 43). In its answer, Fort Knox National Bank asserted that under Kentucky law it would be permitted to establish and operate the branch bank, and that the Comptroller of the Currency had given preliminary approval to the establishment of its

branch office by letter dated April 16, 1965 (Pet. App. 45, 46). The Comptroller of the Currency intervened as a party defendant (Pet. App. 26, 30). The background of the litigation is as follows.

On January 22, 1965, Fort Knox National Bank had submitted an application to the Comptroller of the Currency requesting permission to establish a branch in Radcliff, Kentucky. Following receipt of the application, the Comptroller's office conducted an investigation of the proposal, during which time the petitioners herein were accorded and availed themselves of an opportunity to present their views in opposition to the proposed branch.

On completion of the investigation, the Comptroller, on April 15, 1965, gave his preliminary approval to the application, provided that the bank increase its capital to a minimum of $250,000, and that the branch be opened within twelve months. As of the time of the hearing below, Fort Knox National Bank had not asked for a Certificate of Authority to open the branch nor had one been granted (Pet. App. 30). The evidence in the district court included a map prepared by the Army Corps of Engineers in 1960 (approximately five years before the present controversy), which showed that the principal office of the Fort Knox National Bank was located in that part of Fort Knox which was in Hardin County at the time the United States acquired the land.

On a motion for judgment on the pleadings, the district court held that the Comptroller of the Currency, in approving Fort Knox National Bank's application to open a branch in Radcliff, Hardin

County, had correctly applied Kentucky law, which permits a state bank to establish and operate a branch bank in any incorporated city in the same county in which its principal office is located, provided that no other bank's principal office is located in that city[1] (Pet. App. 27–28). The court found that the defendant Fort Knox National Bank had its principal office on the Fort Knox Military Reservation "on that part of the reservation which, at the time of acquisition by the United States Government, was geographically a part of Hardin County, Kentucky" (Pet. App. 26). The court concluded that (Pet. App. 27):

> The cession in 1904 (KRS 3.030) by the commonwealth of Kentucky of rights and jurisdiction to the United States over the area now known as the Fort Knox Military Reservation did not cause that portion of the Reservation upon which the principal office of the Fort Knox National Bank is located to cease to be a part of Hardin County and the State of Kentucky. The geographic structure of Hardin County and of Kentucky remained the same as it was before the cession of jurisdiction over the area.

The court of appeals affirmed (Pet. App. 29–34), holding that the Comptroller acted reasonably and in accordance with law in approving the establishment of the branch, because under Kentucky law a state bank could establish and operate a branch bank in its home county. In reaching this conclusion, the court of appeals followed the established principle

[1] It was conceded that no bank has its principal office in the city of Radcliff (Pet. App. 31).

that a military reservation within the state remains a geographical part of the municipality or county of which it was a part at the time of its cession to the United States (Pet. App. 33–34).

ARGUMENT

1. The National Bank Act makes applicable to national banks the geographical "restrictions as to location" imposed upon branch banking by State law.[2] Hence, the principal issue presented by the petition is whether the Comptroller and the courts below correctly ruled that the portion of Fort Knox which was a part of Hardin County at the time jurisdiction over it was ceded to the United States continues to be a part of that county for purposes of the branch banking law of Kentucky (Pet. 8–13, Pet. App. 31–32). Concededly, there are no authoritative decisions of the Kentucky courts on this issue (Pet. 12). But this Court does not sit to resolve controversies over the proper interpretation of State law, particularly when (as here) there is no authoritative State court decision on point, and the function of the interpretation is "nothing but a prediction." *The Tungus* v. *Skovgaard,* 358 U.S. 588, 595.

We submit, in any event, that the Comptroller and both courts below were clearly correct in their interpretation of the banking law of Kentucky. For it is settled both in this Court and under the law of

[2] 12 U.S.C. 36(c)(2); *First National Bank of Smithfield* v. *Saxon,* 352 F. 2d 267, 271 (C.A. 4). See *United States* v. *Philadelphia National Bank,* 374 U.S. 321, 328; *Whitney National Bank* v. *Bank of New Orleans,* 379 U.S. 411, 413 n.1.

Kentucky that the cession of jurisdiction over territory by a State to the United States does not remove the land from the political subdivision or municipality of which it had been a part. *Howard* v. *Commissioners*, 344 U.S. 624, affirming 249 S.W. 2d 816 (Ky. Ct. App.).[3] Indeed, petitioners now concede that "geographically," the portion of Hardin County within Fort Knox remained a part of that county (Pet. 10). Thus, it seems clear that the Fort Knox National Bank should be considered to be in Hardin County for purposes of the geographical or area limitations imposed by the law of Kentucky.

2. Petitioner contends that the court of appeals gave undue deference to the Comptroller's interpretation of Kentucky law (Pet. 14–20), asserting that there exists on the issue of the scope of review of his determination a conflict of decision between the Sixth Circuit, citing the decision below and *Community National Bank of Pontiac* v. *Saxon*, 310 F. 2d 224, and the District of Columbia Circuit, citing *Whitney National Bank* v. *Bank of New Orleans & Trust Co.*, 323 F. 2d 290, reversed on other grounds, 379 U.S. 411, and *Commercial Security Bank* v. *Saxon*, 236 F. Supp. 457 (D.D.C.) pending on certiorari as Nos. 51, 73, and 88.[4] We submit that,

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[3] Accord, *e.g.*, *Dupont-Fort Lewis School Dist.* v. *Clover Park School Dist.*, 396 P. 2d 979, 982 (Wash., 1964), *Western Union Telegraph Co.* v. *Commonwealth of Virginia*, 204 Va. 421, 425, 132 S.E. 2d 407, 410 (1963). See also cases cited in Brief for Fort Knox National Bank in Opposition, pp. 5–10.

[4] The question presented in *First National Bank of Logan* v. *Walker Bank & Trust Co.* No. 51, this Term, and *First Security*

notwithstanding the language in the decisions, a closer reading of the cases indicates no conflict in their holdings. Even under the language of the District of Columbia Circuit cases, the result below would be the same, for if a Certificate is issued, the branch will be at a location permitted by the law of Kentucky, so that the Comptroller's action could not be characterized as "approv[ing] the establishment of a branch office at a location prohibited by law," *Whitney National Bank, supra,* 323 F. 2d at 300 (C.A.D.C.), quoting *Commercial State Bank of Roseville* v. *Gidney,* 174 F. Supp. 770, 778 (D.D.C.). In other words, petitioner's contention on the scope of review depends for its validity upon petitioner's assertion that "the law of Kentucky is quite clearly contrary to the determination of the Comptroller * * *" (Pet. 19–20), an assertion we consider to be unsupported by apposite Kentucky or other persuasive authority, and one that is contrary to the rulings of both courts below. See 361 F. 2d at 278–279 (Pet. App. 31–34); Pet. App. 27–28.

In any event, this Court has consistently ruled that "'where Congress has committed to the head of a department certain duties requiring the exercise of judgment and discretion, his action thereon, whether it involve questions of law or fact, will not be reviewed by the courts, unless he has exceeded his authority or this court should be of opinion that his action was

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Bank of Utah v. *Commercial Security Bank*, Nos. 73 and 88, this Term, is whether the National Bank Act incorporates by implication State law restrictions on branch banking, other than "restrictions as to location," which are specifically incorporated (12 U.S.C. 36(c)(2)). The issue here is merely the interpretation of concededly applicable Kentucky law.

clearly wrong.' *Bates & Guild Co.* v. *Payne,* 194 U.S. 106, 108–109." *United States* v. *Shimer,* 367 U.S. 374, 381–382. See also *O'Keeffe* v. *Smith Associates,* 380 U.S. 359, 362–364.[5]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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[5] Petitioners also contend that the authorization to establish a branch in Radcliff confers an unfair advantage upon Fort Knox National Bank because it already operates a branch on that part of the military reservation that is within Meade County, and a state bank would be unable to operate branches in two counties (Pet. 21–22). We have been informed that the bank's office in Meade County operates as a facility pursuant to 12 U.S.C. 90, a facility to which branch banking laws do not apply. *State of Texas* v. *National Bank of Commerce of San Antonio,* 290 F. 2d 229, 233 (C.A. 5), certiorari denied *sub nom. Falkner, Banking Commissioner* v. *National Bank of Commerce of San Antonio,* 368 U.S. 832. At any rate, if there were any impropriety in the operation of a branch in Meade, this proceeding is not appropriate to challenge it.

APPENDIX

STATUTES INVOLVED

The National Bank Act, Revised Statutes § 5155, as amended by Section 23 of the Banking Act of 1933, 12 U.S.C. 36, provides in pertinent part:

> § 36. Branch banks.
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> The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:
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> * * * * *
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> (c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. In any State in which State banks are permitted by statute law to maintain branches within county or greater limits, if no bank is located and doing business in the place where the proposed agency is to be located, any national banking association situated in such State may, with the approval of the Comptroller of the Currency, establish

and operate, without regard to the capital requirements of this section, a seasonal agency in any resort community within the limits of the county in which the main office of such association is located, for the purpose of receiving and paying out deposits, issuing and cashing checks and drafts, and doing business incident thereto: *Provided,* That any permit issued under this sentence shall be revoked upon the opening of a State or national bank in such community. Except as provided in the immediately preceding sentence, no such association shall establish a branch outside of the city, town, or village in which it is situated unless it has a combined capital stock and surplus equal to the combined amount of capital stock and surplus, if any, required by the law of the State in which such association is situated for the establishment of such branches by State banks, or, if the law of such State requires only a minimum capital stock for the establishment of such branches by State banks, unless such association has not less than an equal amount of capital stock. [As amended July 15, 1952, c.753, § 2(b), 66 Stat. 633; Sept. 28, 1962, Pub. L. 87–721, 76 Stat. 667.]

Kentucky Revised Statutes 3.030 provides:

> Kentucky cedes to the United States all the rights and jurisdiction which she now possesses over the land and premises in the vicinity of West Point, Kentucky, conveyed or to be conveyed to the United States for the purpose of establishing a permanent camp of instruction and military post, so long as the same shall remain the property of the United States.

The Kentucky statutes regulating branch banking, Kentucky Revised Statutes 287.180, provide in pertinent part:

> (1) Banks authorized under the laws of this state may, except as provided in subsection (2)

of this section, exercise, only at their principal office, powers necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange and other evidences of debt, and by purchasing bonds, receiving deposits and allowing interest thereon, buying and selling exchange, coin and bullion and lending money on personal or real security.

(2) Any corporation presently or hereafter engaged in the business of banking, and meeting the requirements of this subsection, may apply to the Commissioner of Banking for permission to establish, within the city in which its principal office is located and, subject to the limitation hereinafter imposed, within the county in which its principal office is located or in an adjacent county, in which there is no existing bank a branch at which all of the powers conferred in subsection (1) of this section may be exercised. Before the Commissioner of Banking shall approve or disapprove any application made under this subsection he shall ascertain and determine that the public convenience and advantage will be served and prompted thereby and that there is reasonable probability of the successful operation of such branch. No such branch shall be authorized or approved by the commissioner unless all of the following are complied with:

(a) No such corporation having a combined capital and surplus of less than $100,000 shall be permitted to establish any branch. Any corporation applying for permission to establish a branch shall, be required to have a minimum combined capital and surplus for each branch in any unincorporated area within a following table:

* * * * *

(b) No such corporation shall be permitted to establish a branch in any incorporated city, other than in the city in which its principal

office is located or in any adjacent county, in which there is an existing bank. Nor shall any such corporation be permitted to establish a branch in any unincorporated area within a radius of one mile of an existing bank located in such unincorporated area. As used in this subsection, an "existing bank" shall mean the principal office of a bank as distinguished from a branch thereof.

* * * * *

(5) Any national banking association or any state bank member of the Federal Reserve System whose principal office is located in this state is hereby authorized to do all things and perform all acts which state banks are permitted to do or perform under this section, subject to the conditions and restrictions provided for banks as to exercise of such powers.

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